IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE DHARMA RAO ELIPE
AND
THE HONOURABLE Ms.JUSTICE K. SUGUNA

W.P.Nos.25606 and 25607 of 2006
and
28392 to 28394 of 2006 &
M.P. Nos.1 and 2 of 2006

W.P.No.25606 of 2006:

1. Union of India, rep.
by the General Manager
Southern Railway
Chennai 600 003
2. The Chief Workshop Manager
Carriage and Wagon Works
Ayanavaram
Chennai 600 023
3. The Deputy Chief Mechanical
Engineer (Loco)
Southern Railway
Ponmalai
Tiruchirapalli-4 ... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600104.

2. K.Babu Rajendran ... Respondents

WP.No.25607/06:-

1. Union of India, rep.
by the General Manager
Southern Railway
Chennai 600 003

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2. Division Railway Manager,
   Trichy Division,
   Southern Railway,
    Tiruchirappalli 4.

3. The Senior Divisional Mechanical Engineer,
   Diesel Shed, Golden Rock,
   Tiruchirapalli.

4. The Divisional Mechanical Engineer,
   Diesel Shed, Golden Rock,
   Tiruchirapalli. ...Petitioners

vs

1. The Registrar
   Central Administrative Tribunal
   Madras Bench
   Chennai 600 104

2. L. Arputharaj,
   No.4/198, Thirunagar,
   Ponmalai, Trichy.4. ...Respondents

W.P.No.28392 of 2006:

G. Lakshmanan
Ex-Technician Grade-I
Railway Workshop
Southern Railway
Tiruchirappalli-4 ... Petitioner

Vs.

1. Union of India, rep.
   by the General Manager
   Southern Railway
   Chennai 600 003

2. The Chief Workshop Manager
   Carriage and Wagon Works
   Ayanavaram
   Chennai 600 023

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3. The Deputy Chief Mechanical
Engineer (Loco)
Southern Railway
Ponmalai
Tiruchirapalli-4

4. The Registrar
Central Administrative Tribunal
Chennai 600 104 ... Respondents

WP.No.28393/2006:-

V. S. Chandran,
Ex. Welder, Grade II,
Wagon Assembly Shop,
Southern Railway, Ponmalai,
Tiruchirappalli 4. ...Petitioner

vs

1. Union of India, rep.
by the General Manager
Southern Railway
Chennai 600 003

2. The Chief Workshop Manager
Carriage and Wagon Works
Ayanavaram
Chennai 600 023

3. The Workshop Manager
Carriage and Wagon,
Southern Railway,
Trichy 4.

4. The Registrar
Central Administrative Tribunal
Chennai 600 104 ...Respondents

WP.No.28394/2004:-

Mr. P. Manoharan,
Ex. Senior Clerk, DSD,
Railway Workshop
Southern Railway, Ponmalai,
Tiruchirappalli 4. ...Petitioner

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vs

1. Union of India, rep.
   by the General Manager
   Southern Railway
   Chennai 600 003

2. The Deputy Chief Materials Manager,
   Southern Railway, Ponmalai,
   Trichy 4.

3. The Chief Workshop Manager
   Carriage and Wagon Works
   Ayanavaram, Chennai 600 023

4. The Registrar
   Central Administrative Tribunal
   Chennai 600 104 ...Respondents.

* * *

All the petitions are filed under Art.226 of the Constitution of India. W.P.No.25606 of 2006 has been filed praying to issue a Writ of Certiorari to call for the records of the 1st respondent in O.A.No.766 of 2005 and 283/05 respectively including the order dated 5.6.2006 and quash the same (in WP. 25606 & 25607/06)

(ii) calling for the records relating to the order of the fourth respondent in O.A.No.768 of 2005 dated 5.6.2006 confirming the order of the first respondent herein dated 29.7.2005 in No.P (A)90/2005/433 and quash the same and direct the respondents to reinstate the petitioner in service as carpenter grade I with effect from 31.1.2004 with all attendant benefits (in WP.28392/2006).

(iii) calling for the records relating to the order of the fourth respondent in O.A.No.769 of 2005 dated 5.6.2006 confirming the order of the first respondent herein dated 29.7.2005 in No.P (A) 90/2005/435 and quash the same and direct the respondents to reinstate the petitioner in service as Welder grade I with effect from 31.1.2004 with all attendant benefits (in WP.28393/2006) and;

(iii) calling for the records relating to the order of the fourth respondent in O.A.No.767 of 2005 dated 5.6.2006 confirming the order of the first respondent herein dated 29.7.2005 in No.P (A) 93/Misc/383 and quash the same and direct the respondents to reinstate the petitioner in service as Senior Clerk with effect from 31.1.2004 with all attendant benefits (in WP.28394/2006).

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For Petitioners in W.P. Nos.28392 to 28394/2006 and 2nd Respondent in W.P. Nos.25606 and 25607 of 2006 : Mr. AR.L. Sundaresan Senior Counsel for Ms.AL Gandhimathi

For Respondent 1 to 3 in W.P.Nos.28392 to 28394 of 2006 and petitioners in W.P. No.25606 & 25607/06 28393/06 : Mr. R. Thiagarajan Senior Counsel for Mr.V.G. Sureshkumar

* * *

COMMON ORDER

DHARMA RAO ELIPE, J.

This common order will dispose of the above five writ petitions as they have in common the fact-situation and the issues arising therefrom. In all these writ petitions, the challenge is to the order dated 5-6-2006 passed by the Central Administrative Tribunal (in short 'the Tribunal'). While W.P.Nos.28392 to 28394 of 2006 were filed by the three original applicants, W.P.Nos.25606 and 25607 of 2006 were filed by the Railways.

2. On a perusal of the materials placed on record and upon hearing the learned senior counsel for both, it comes to be known that the petitioners in W.P. Nos.28392 to 28394 of 2006 and respondents in W.P.Nos.25606 and 25607 of 2006 (hereinafter referred to as 'the delinquent-employees') were the employees of the Railways. Alleging that on 30-1-2004, they all, with premeditated mind, gathered on the platform of the Tiruchy Railway Junction, hurled verbal abuses against a retired Railway officer, who was leaving Trichy by train along with his family members, assaulted and threatened him and also threatened and intimidated the other railway officers who were there to see-off the retired officer and thereby created panic, terror and tension in the minds of not only the retired officer and his family members and the other railway officers, but also the other passengers and the general public, an order of dismissal was passed on 30-1-2004. A complaint was also lodged with the Railway Police, resulting in a criminal case. It was pointed out in the order of dismissal that it would not be practicable to hold an enquiry before directing dismissal. The

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departmental appeals filed by the delinquent-employees were rejected. The delinquent-employees were, however, acquitted in the criminal case. On the revision/representation filed by the delinquent-employees, the revisional authority set aside the penalty of dismissal from service in respect of three delinquent-employees and ordered their reinstatement with reduction in rank to the lower post, but summarily rejected the revision/representation filed by the other two delinquent employees. Challenging the order of the revisional authority, original applications were filed before the Tribunal. The Tribunal, by the common order, quashed the orders passed by the revisional authority and directed the restoration of the original applicants to their original position and directed the Railways to regulate the period of their dismissal from 31-1-2004 to the date of reinstatement strictly in accordance with law. Aggrieved, while the Department has filed W.P.Nos.25606 and 25607 of 2006 challenging the order of reinstatement of two employees, three employees, who were reduced in rank, have filed W.P.Nos.28392 to 28394 of 2006. Since a common issue is involved, all these writ petitions are taken up for common disposal.

3. For the sake of convenience and for easy reference, the petitioners in W.P.Nos.28392 to 28394 of 2006 and the 2nd respondent in W.P.Nos.25606 and 25607 of 2006 are referred to as the delinquent-employees while the officials, who have filed W.P.Nos.25606 and 25607 of 2006 and who are the respondents in W.P.Nos.28392 to 28394 of 2006 are referred as respondents.

4. The learned senior counsel appearing for the delinquent-employees submitted that the action of the third respondent in resorting to Rule 14(ii) of the Railway Servants (Disciplinary and Appeal) Rules (in short 'the Rules') for dispensing with the enquiry against the delinquent-employees and passing the order of dismissal on the very same day is arbitrary, illegal and unjust and violative of the principles of natural justice; that there was no compelling reasons shown in writing by the third respondent for invoking the extraordinary provisions of Rule 14(ii) of the Rules; that the undue haste shown by the third respondent in resorting to Rule 14(ii) of the Rules and passing the dismissal orders would only exhibit the non-application of mind by the third respondent and the pre-determined mind of the authorities to victimise the employees concerned.

5. According to the learned senior counsel when once the authorities have chosen to file a criminal case against the employees concerned, they ought to have await the judgment of the criminal court or, at least, they should have, instead of resorting to Rule 14 (ii), initiated the regular departmental action against the delinquents by issuing a charge memo and holding an enquiry or at the most could have suspended them till the conclusion of the criminal

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case. In support of his contention, learned counsel relied on the Supreme Court decision in UNION OF INDIA v. THULSIRAM PATEL (AIR 1985 SC 1416) and certain executive instructions issued by the Railways and the Government of India.

6. The learned senior counsel for the delinquent employees would further submit that the third respondent, who passed the dismissal order dated 31.1.2004 was not competent to pass such an order. According to the learned senior counsel, in view of Rule 2(1)(a) of the Railway Servants (Discipline and Appeal) Rules, 1968 read with Schedule II annexed thereto, the third respondent, not being the appointing authority of the delinquent-employees, is not competent to pass the order of dismissal. As the order of dismissal was passed by the authority who has no jurisdiction to pass, the same is liable to be set aside.

7. The next submission of the learned senior counsel for the delinquent employees is that since the criminal case filed against the delinquent-employees concerned on the very same set of alleged facts has ended in acquittal, they are entitled for the reinstatement in their respective original position with effect from 31-1-2004 with all attendant service benefits.

8. It was also contended that that when the disciplinary authority himself had been cited as a witness in the First Information Report filed on the very date of the alleged occurrence, he ought not to have passed the dismissal order. In such circumstances, the proper course was to refer the matter to some other authority. In support of this contention, learned counsel relied on the decision of the Supreme Court in ARJUN CHAUBEY v. UNION OF INDIA (1984 [2] SCC 578).

9. Thus, according to learned senior counsel for the delinquent employees, the imposition of major penalty of dismissal from service without holding any enquiry and the subsequent penalty of reduction in rank with low pay scale imposed by the revisional authority ignoring the order of acquittal passed in the criminal case are illegal, unjust and unsustainable in law. The impugned order is, therefore, liable to be set aside and the delinquent-employees are entitled for the reinstatement to their original position as on 31-1-2004 with all attendant service benefits.

10. On the contrary, the learned senior counsel appearing for the Railways submitted that the Tribunal, after having accepted the contentions of the Railways relating to the delinquency of the employees and the competency of the authority to take action under Rule 14(ii) of the Rules, erred in interfering with the quantum of punishment awarded to two employees on the ground that leniency was shown to the other three employees; that the Tribunal overlooked the

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fact that in the case of the three employees there were mitigating circumstances in their favour for taking a lenient view whereas in the case one Babu Rajendran, his past service record was tainted with misconduct and he has been inflicted with various penalties such as withholding of passes/PTOs, reduction of pay, etc.

11. The learned senior counsel for the Railways further submitted that when once the misconduct is proved, the quantum of punishment is within the domain of the disciplinary authority and unless the punishment imposed is shockingly disproportionate to the charges levelled against the delinquent, there is no scope for interference with the same. The Tribunal proceeded on a wrong footing that when the punishment was reduced in the case of three delinquents, the other two delinquents should also be treated alike. It is well settled that there is no equality in illegality. In the present case, the revisional authority had taken into consideration various factors such as the extent and gravity of the misconduct, past service records of the delinquents, the judgment of the criminal court, etc. to come to the conclusion that in the case of three of the delinquents, lesser punishment could be imposed and in the case of the other two delinquents, the order of dismissal was justified.

12. The Tribunal has framed three issues for determination, viz. (i) whether the order of dismissal was approved and issued by the competent authority; (ii) whether the decision not to hold the enquiry under the relevant rules are valid or not; and (iii) whether on receiving representations from the applicants for reinstatement after the criminal case filed against them had ended in acquittal was properly considered or not.

13. The Tribunal has come to the conclusion that the order of dismissal was ordered and issued by the competent authority; that there is no infirmity in the action of the respondents who had dispensed with the inquiry leading to dismissal. The Tribunal also hold that the failure on the respondents to objectively consider the appeals as well as revision petitions after the acquittal of the accused in criminal cases, renders the decision, as conveyed through the impugned orders, illegal.

14. We have given our anxious consideration to the rival contentions of the parties. We have also gone through the entire materials on record, including the judgment passed by the criminal court. The points that arise for consideration in these matters are:

(1) Whether the third respondent, who passed the orders of dismissal, is competent to pass such orders of dismissal?

(2) Whether the respondents are justified in dispensing with enquiry and invoking Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968?

(3) Whether the Tribunal is right in ordering reinstatement

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of two employees and not interefering with the order of reduction of rank and pay scale in respect of three delinquent-employees?

(4) What relief, the parties are entitled to?

POINT No.1:-

15. The learned senior counsel for the employees submit that in view of the provisions of Rule 2(1)(a) of the Railway Servants (D&A) Rules read with Schedule II thereunder, the third respondent, not being the appointing authority of the employees, is not the competent authority to pass the orders of dismissal and since the impugned orders of dismissal were passed by the incompetent authority, the same are liable to be quashed. As an answer to this, the learned senior counsel for the Railways would submit that the 3rd respondent, as the Junior Administrative Grade Officer, is competent to exercise the powers of the Appointing Authority in respect of employees drawing pay in the scale upto Rs.5500-9000 and it is well within his jurisdiction, as conferred upon him under Sub Rule 2 of Rule 7 as laid down in the second schedule of the Railway Servants (Discipline and Appeal) Rules 1968 and as clarified in Personnel Branch Circular No.161/2004.

16. A thorough perusal of Rule 4 and sub-rule (2) of Rule 7 and the Schedule-II of the Railway Servants (Discipline and Appeal) Rules 1968 and the Railway Board Communication No.E(D&A) 2002 RG 6-30, dated 25.11.2002 relied on by the learned senior counsel for the petitioners, we are able to find that by virtue of the clarification issued in Personnel Branch Circular No.161/2004, the 3rd respondent is the competent authority to pass such orders of dismissal, as has been rightly decided by the Tribunal. Therefore, the argument advanced on the part of the learned senior counsel for the petitioners is rejected, holding that the 3rd respondent is competent to pass such orders.

17. At this juncture, the learned senior counsel for the petitioners/employees would submit that Mr.K.Raman, who was Dy.CME/GOC, who passed the order of dismissal dated 31.1.2004, ought not to have passed the said order since he had been cited as a witness in the FIR filed earlier in the day with the police. In support of his contention, the learned senior counsel for the petitioners relied on a judgment of the Apex Court in ARJUN CHAUBEY vs. UNION OF INDIA [(1984) 2 SCC 578] wherein it has been held:

> "No person can be a judge of his own cause and no witness can certify that his own testimony is true and anyone who has a personal stake in an enquiry must keep himself aloof from the enquiry."

18. We have no quarrel with the above said proposition of law laid down by the Apex Court. But, the said judgment was rendered in the context when an officer, who lodged the complaint, was made the

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enquiry officer to deal with the delinquent in a domestic enquiry. The same is not the position here. In the case on hand, as could be seen from the judgment in C.C.No.287 of 2004 on the file of the Judicial Magistrate No.IV, Trichy, the said Raman has been cited as P.W.5. Since the departmental proceedings and criminal proceedings are distinct and separate, it cannot be said that the said Raman could not have passed the dismissal orders. Since being the authority concerned with the affairs of the Department that too in passing the orders of dismissal order, it is but natural for the said Raman to be cited as a witness before the criminal court, which, cannot, in no way be termed as either illegal or irregular. Therefore, the submission of the learned senior counsel for the petitioners does not hold water and the same is, accordingly, rejected. Point No.1 is accordingly answered.

POINTS No.2 TO 4:-

19. Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, which is analogous to Article 311(2) of the Constitution of India, wherefrom the power has been drawn by the Disciplinary Authority, to pass the impugned order of dismissal reads:

> "14. Special Procedure in certain cases -
>
> Notwithstanding anything contained in Rules 9 to 13 -
>
> (i) ....
>
> (ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
>
> (iii) ...
>
> The disciplinary authority may consider the circumstances sof the case and make such orders thereon as it deems fit;
>
> Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

Thus, Rule 14(ii) itself mandates that the disciplinary authority shall record his reasons in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules.

20. As already adverted to supra, Rule 14(2) is analogous to Article 311(2) of the Constitution. In UNION OF INDIA AND ANOTHER vs. TULSIRAM PATEL (AIR 1985 SC 1416), the Constitutional Bench of the Apex Court has held in para No.130, as follows:

> "The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English dictionary "practicable" means

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"capable of being put into practice, carried out in action, effected, accomplished, or done, feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. .... The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty."

21. In this case, as could be seen from the impugned order of dismissal, no reasons for dispensing with the enquiry are given by the disciplinary authority, except saying that it is not reasonably practicable to hold an inquiry. In UNION OF INDIA AND ANOTHER vs. TULSIRAM PATEL (AIR 1985 SC 1416), the Apex Court has categorically held in para No.133 as follows::

"The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."
(emphasis supplied)

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22. In Para No.134 of the said judgment, it has been held:

"It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry...."

23. In the said judgment itself, while dealing with the argument that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order, the Apex Court, though rejected the said argument, has observed in para No.135 of its judgment as follows:

"... the constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. At clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government

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servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons."

24. In para No.137 of the said judgment, it has been held: "Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgement over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a courtroom, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."

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25. Therefore, while dealing with such matters, a duty is cast upon the Court, putting itself in the place of the disciplinary authority and consider what in the then prevailing situation, a reasonable man acting in a reasonable way would have done and the matter will have to be judged in the light of the then prevailing situation. It is in this context, now we have to see the way in which the impugned order of dismissal has been passed.

26. In the impugned order, as has already been extracted supra, the disciplinary authority has simply stated that 'I am convinced that it is not reasonably practicable to hold an enquiry.' which is quite against the dictum laid down by the Apex Court in UNION OF INDIA AND ANOTHER vs. TULSIRAM PATEL (AIR 1985 SC 1416), extracted supra, wherein it has been held in no uncertain terms that 'it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry'. Except to narrate the alleged incident, nothing else has been mentioned in the impugned order of dismissal dated 31.1.2004. Therefore, it suffers from lack of reasons for dispensing with the enquiry.

27. At this juncture, the learned counsel for the respondents/Railways invited our attention to the decision of the Apex Court in AJIT KUMAR NAG vs. GENERAL MANAGER (PJ), INDIAN OIL CORPORATION LTD., HALDIA AND OTHERS [(2005) 7 SCC 764], wherein while dealing with the question of dismissal without enquiry, the Apex Court has held:

> "Taking of appropriate action in exceptional circumstances is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. Normally, it is the officer on the spot who is the best judge of the situation and his decision should not be interfered with lightly. In certain cases, the exigencies of a situation would require that prompt action should be taken and suspending (a workman) would not serve the purpose and sometimes not taking prompt action might result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the troublemakers as a sign of weakness on the part of the authorities and thus encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities."

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28. We have no quarrel with the proposition laid down by the Apex court in the above case. The Tribunal, relying on the said judgement, has held that there is no infirmity in the action of the respondents who had dispensed with the inquiry leading to dismissal, forgetting the bottom line of the above judgement that 'it is the officer on the spot who is the best judge of the situation...' Admittedly, the person who signed the dismissal order, viz. the third respondent herein, was not present at the scene of occurrence and as said above, no reason, as mandated under Rule 14(ii) itself, has been assigned in the impugned order of dismissal for dispensing with the enquiry. The Tribunal, without assessing the facts and circumstances of the case and ignoring the law laid down by the Apex court in UNION OF INDIA AND ANOTHER vs. TULSIRAM PATEL (AIR 1985 SC 1416), to the effect that in such circumstances, 'the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done' has arrived at a wrong conclusion that 'there is no infirmity in the action of the respondents who had dispensed with the inquiry'.

29. Since already a criminal complaint has been lodged by the retiring officer Mr.S.M.Krishnan, and since the disciplinary authority himself was not present at the scene of occurrence and further, no compelling reasons to dispense with the enquiry have been explained in writing, thereby to presume legally that no such compelling reasons are present to dispense with the enquiry, in all fairness, the disciplinary authority, ought to have contemplated an enquiry before proceeding with the matter and ought to have given a reasonable opportunity to the delinquent officers to explain the charge. In the absence of any reasons, much less recorded as has been mandated under Rule, to show that it was not reasonably practicable to hold a disciplinary inquiry, we are of the opinion that the discretionary power was exercised for an extraneous purpose to dismiss the delinquents and that the same is arbitrary and perverse since no reasonable person could form such an opinion on the given material and thus the impugned orders of dismissal are hit by malice also. The alleged incident and the impugned orders of dismissal were all dated 31.1.2004, which shows the haste in which the disciplinary authority has acted. Following the dictum laid down by the Apex Court in UNION OF INDIA AND ANOTHER vs. TULSIRAM PATEL (AIR 1985 SC 1416), this Court, putting itself in the place of the disciplinary authority, is able to find that as on the date of passing the impugned orders of dismissal, the disciplinary authority, being not even present at the scene of occurrence, has not collected any evidence from any corner to issue the orders of dismissal on the delinquents but has taken a haste decision, not supported by any evidence, to invoke the extraordinary provision of Rule 14(ii), which is unreasonable. While invoking the stringent extraordinary

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provisions like Rule 14(ii), principles of natural justice require every care to be taken by the concerned authorities. Any haste in invoking such stringent provisions, without even complying with the mandatory requirements of the provision, would make such decision of the disciplinary authority illegal, being an abuse of power conferred upon it.

30. Further more, in UNION OF INDIA vs. R.REDDAPPA [(1993) 4 SCC 269], when about 800 railway employees were dismissed under R.14(ii) of Railway Servants (Discipline and Appeal) Rules for participating in the Loco Running Staff Association strike in January, 1981 on the ground that holding an inquiry was not reasonably practicable and the Hyderabad Bench of the Central Administrative Tribunal set aside the orders of dismissal on the ground of absence of any material to support the said finding. When the same was assailed by the Department before the Apex Court contending that the Tribunal had exceeded its jurisdiction, the Apex Court has held:

> "The jurisdiction to exercise the power under R.14(ii) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule, then the action was vitiated due to erroneous assumption of jurisdictional fact. Therefore, the Tribunal was well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted sunder the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation."

Following the above said judgment also, it can very well be held that the impugned orders of dismissal suffers from want of materials and in the absence of any material to substantiate the mere oral stand of the Department that holding an inquiry was not reasonably practicable, without offering any reasons, much less in writing, as mandated by Law, the impugned orders of dismissal are liable to be quashed.

31. At this juncture, the learned senior counsel appearing for the respondents/Railways would contend that the scope of judicial review in matters of disciplinary proceedings is very limited and the Court cannot traverse into the facts of the case. In support of his contentions, he relied on a judgment of the Apex Court in CHAIRMAN AND MANAGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS vs. P.C.KAKKAR [(2003) 4 SCC 364], wherein the Apex court has held that

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"The punishment imposed by disciplinary authority unless shocking to the conscience of the court/tribunal is not subject to judicial review. Where the court finds the punishment to be shockingly disproportionate, it must record reasons for coming to such conclusion and merely stating that the punishment was shockingly disproportionate are not sufficient. On finding the punishment to be shockingly disproportionate normally the court should direct the disciplinary authority or appellate authority to reconsider the penalty imposed. However, to shorten litigation the court may in exceptional or rare cases impose appropriate punishment after recording cogent reasons in support thereof."

32. In the cases on hand, without conducting any enquiry and without assigning any reason, as mandated under law, the stringent provisions of Rule 14(ii) were applied by the respondents to dismiss the delinquent employees. As already adverted to supra, the act of the respondents is unjust and arbitrary and hit by malice also. In MATHURA PRASAD vs. UNION OF INDIA [(2007) 1 SCC 437], the Apex Court has held:

"When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

Therefore, since the disciplinary authority has used his discretionary power in haste and without application of mind, thereby depriving the livelihood of the employees, this Court can certainly interfere by way of judicial review. Therefore, the argument advanced on the part of the learned senior counsel for the respondents/Railways is rejected.

33. The learned senior counsel for the petitioners-delinquent employees would further submit that since the criminal court had categorically held that the offences under Sections 147,294-B, 323 and 506(ii) IPC had not been proved, the petitioners are entitled to be reinstated in service with all consequential benefits.

34. In catena of decisions, the Apex Court has held that acquittal of the delinquent employee in a criminal case, ipso facto, does not absolve him from the liability under the disciplinary jurisdiction and a judgment of acquittal passed in favour of the employees in a criminal action initiated in respect of the misconduct

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(s) concerned, by giving benefit of doubt, would not, per se ,be binding upon the employer and does not automatically give the employee the right to be reinstated, vide AJIT KUMAR NAG vs. G.M. (PJ), INDIAN OIL CORPORATION LTD. [(2005) 7 SCC 764] and MANAGER, RESERVE BANK OF INDIA vs. S.MANI [(2005) 5 SCC 100]. Therefore, the argument of the learned senior counsel for the petitioners/delinquent employees that on the acquittal of the delinquents in the criminal case, the authorities should have, automatically, reinstanted them in service, cannot be appreciated.

35. However, in CHAIRMAN ANDMANGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS vs. P.C.KAKKAR [(2003) 4 SCC 364], the Apex Court has observed:

> "Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in the criminal case. It, per se, would not entitle the employee to claim immunity from the proceedings. At the most, the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application."

36. In the case on hand, since the authorities have invoked the extraordinary power under Rule 14(ii), dispensing with the enquiry, and further since the alleged incident was held to be not proved by the criminal court, after thorough trial, the appellate and revisional authorities ought to have considered the said aspect of acquittal while imposing the punishment. Therefore, we are of the view that the factum of acquittal is a circumstance to be considered while awarding punishment in this case.

37. For all the reasons, we hold that the impugned orders of dismissal passed against the delinquent employees, dispensing with the enquiry, are bad in law, though the authority who passed the impugned orders of dismissal is competent to pass the same and that the appellate and revisional authorities ought to have considered the acquittal of the delinquent employees in the criminal case, before imposing punishment on them. Points 2 and 3 are answered accordingly.

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POINT No.4:-

In the result, W.P.Nos.28392 to 28394 of 2006 filed by the delinquent employees are allowed and W.P.Nos.25606 and 25607 of 2006 filed by the Railways are dismissed.

The delinquent employees are ordered to be reinstated into service in their original position, with all service benefits and

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backwages, from 31.1.2004, as if they are continuing in their respective positions without any break, within thirty days from the date of receipt of a copy of this order.

No order as to costs.
Consequently, M.P.Nos.1 and 2 of 2006 are closed.

Jai/Rao

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The General Manager
   Southern Railway
   Chennai 600 003

2. The Chief Workshop Manager
   Carriage and Wagon Works
   Ayanavaram
   Chennai 600 023

3. The Deputy Chief Mechanical
   Engineer (Loco)
   Southern Railway
   Ponmalai
   Tiruchirapalli-4

4. The Registrar
   Central Administrative Tribunal
   Madras Banch
   Chennai 600 104

5. The Divisional Railway Manager,
   Trichy Division, Southern Railway,
   Tiruchirapalli 4.

6. The Senior Divisional Mechanical Engineer,
   Diesel Shed, Golden Rock,
   Tiruchirapallai.

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7. The Divisional Mechanical Engineer,
   Diesel Shed, Golden Rock,
   Tiruchirapalli.

8. The Workshop Manager
   Carriage and Wagon,
   Southern Railway,
   Trichy 4.

9. The Deputy Chief Materials Manager,
   Southern Railway, Ponmalai,
   Trichy 4.

+ 2 ccs to Mrs. A. L. Gandhimathi, Advocate SR no. 36199

+ 1 cc to Mr. V. G. Suresh Kumar, Advocate SR No. 36338

NG(CO)
SR/21.6.2007

Common Order in W.P.Nos.25606,
25607 & 28392 to 28394/2006

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